IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

O.S. WRIT PETITION NO. 2210 OF 2003

1) Central Bank of India A banking Company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 through the Chief Manager, Zonal Office, Standard Bldg., 1st Floor, 51 D.N. Road, Fort, Mumbai - 400 023	Petitioner

Versus

1) Central Bank of India Employees Union,a Trade Union registered under the Trade Unions Act, 1926, having its office at Central Bank Building, 2nd East Wing, 4th Floor, Hutatma Chowk, M.G. Road, Mumbai - 400 023	Respondents
2) Shri. S.C. Pandey Presiding Officer, Central Govermemt Industrial Tribunal No. 1, having his Office at 1st Floor, Shram Raksha Bhavan, Shiv Srushti, Opp. Priyadarshini, Off. Eastern Express Highway, Sion Mumbai - 400 022.	

Mr. P.K. Rele, Sr. Advocate with Mr. R.S. Pai and Mr. S.V. Uttam i/b Mulla & Mulla & CBC for petitioners.

Mr. P.M. Shah, Advocate for respondent no. 1.

CORAM : ABHAY S. OKA, J.

DATE : 30TH JUNE, 2006

JUDGMENT

1. On the last date the submissions made by the learned Counsel for the Petitioner were heard. On the last date, the learned Advocate on record appearing for the Respondent No. 1 stated that he had no instructions in the matter. To enable him to take instructions, though the submissions of the learned Senior Counsel for the petitioner were heard, the judgment was not delivered and the petition was kept today.

2. The learned Advocate on record appearing for the Respondent no. 1 today stated that he was taking steps for withdrawal of his Vakalatnama filed on behalf of the Respondent no. 1 and therefore, he was unable to make any submissions.

3. By this petition under Article 226 of the Constitution of India, the Petitioner has taken exception to the judgment and order dated 29th July, 2003 passed by learned Presiding Officer of the Central Government Industrial Tribunal No. I on an application dated 27th February 2003 filed by the Respondent No. 1. With a view to appreciate the submissions made by the learned senior counsel appearing for the Petitioner, it will be necessary to refer the facts of the case in brief.

4. The first Respondent raised industrial dispute in respect of one Smt. Rekha I. Mehta, a Clerk employed with the Petitioner- Bank. On the basis of various allegations regarding fraud allegedly played by the said workman, a disciplinary proceeding was initiated. An enquiry was held. In the enquiry various witnesses were examined by the Petitioner. The Petitioner examined a Hand Writing Expert Mr. H.T. Gajjar. However the concerned workman did not cross examine the said Hand writing Expert. Ultimately the charges against the workman were held established. After giving a Show Cause Notice, the disciplinary authority passed an order of dismissal. An appeal preferred by the concerned workman against the order of dismissal was dismissed by the Appellate Authority. An industrial dispute was raised which was forwarded by the Appropriate Government to the Central Government Industrial Tribunal for adjudication. By Judgment and Order dated 3rd July, 1996, the Tribunal held that the enquiry against workman was fair and proper. However, while passing the Part I award, the Tribunal permitted the workman to examine a Hand Writing Expert of her
choice. The workman on the basis of the liberty granted examined one Hand Writing Expert Shri. Mahesh Wagh. On the application made by the first Respondent, a permission was granted by the Tribunal to produce opinion of another Hand Writing Expert Shri. Anil

Kumar Mathur who was allowed to be examined before Tribunal. After examination of said two Hand Writing experts, an application was made on 27th February, 2003 by the Advocate appearing for the first Respondent praying that witness summons be issued to Shri H.T. Gajjar who was examined by the petitioner during the course of disciplinary enquiry. It was stated that the presence of the said witness was required for the purpose of examining him on his opinion relied upon by the petitioner in the disciplinary enquiry. The said application has been allowed by the impugned Judgment and order.

5. Shri. Rele, learned senior counsel appearing for the petitioner submitted that the learned Tribunal has committed a gross illegality by allowing cross examination of the witness examined during the course of enquiry conducted against the workman even after recording a finding that the enquiry was fair and proper. He submitted that the enquiry could not have been allowed to be re-opened by the Tribunal in this fashion. He submitted that the first Respondent had availed of the liberty granted by the Tribunal to him while passing award (Part I) by examining two Hand Writing experts. The learned Counsel stated that though in this petition this Court did not stay the proceeding of the reference, the reference is still pending before the Tribunal. He submitted that the order deserves to be set aside.

6. I have considered the submissions of the learned senior counsel appearing for the petitioner. It is not in dispute that Shri. H.T. Gajjar was examined as a Hand Writing expert by the Petitioner before the Enquiry Officer and though an opportunity was available to the concerned workman, she did not cross examine the Hand Writing Expert. It will be necessary to refer to the Award (Part I) made by the Tribunal on 3rd July, 1996. The learned Tribunal in Paragraph No. 20 has noted the contention raised by the first respondent that the Enquiry Officer should have sent the disputed documents to the Office of Hand Writing expert appointed by the workman. The learned Tribunal recorded a finding that the original documents could not have been sent to the Hand Writing Expert appointed by the workman as there was every possibility that the said documents could have been misplaced or lost. The said documents were very crucial for the case of the Petitioner. In paragraph 21, learned Presiding Officer of the Tribunal recorded a categorical finding that the domestic enquiry held against the workman was fair, legal and proper. After recording the said finding, in Paragraph No. 22 and 23 the learned Presiding Officer observed as under :

> "22. However, now the question arises if the charge levelled against the workman has been established to the satisfaction of the

Tribunal. Hence, I would like to point out that the workman by her own conduct prevented a handwriting expert of her choice to throw light on the question of authorship of the interpolations in the impugned documents. It was a foolish action on the part of the workman and I feel that her fully or fally of her representative at the enquiry should not come in the way of finding out the truth. When the management has examined a handwriting expert to prove its case, it would be in fitness of things that a second opinion is also obtained on behalf of the workman before deciding this crucial issue.

23. Hence, I direct that in case the workman intimates the management, about its desire to get the disputed documents and specimen handwritings of the workman examined by a handwriting expert of her choice, by a written request within 15 days of intimation of this order to the workman, the management shall allow and permit the handwriting expert named by her, to examine and photograph the said documents on a specified day within office hours on any working day, convenient to such handwriting expert. After such examination, if the workman is desirous of examining such handwriting expert in the Tribunal in support

> of her defence, the workman shall furnish the written report of the said handwriting expert with photographs including enlargements, negatives etc. to the Tribunal within one month of the examination of the documents, with copies of such report and photographs and enlargments, if any to the other side within the aforesaid period, and the handwriting expert shall be kept present for his evidence in the Tribunal on 18/9/1996."

7. Thus liberty granted by the Tribunal was to enable the workman to get the disputed documents and specimen handwritings examined by the handwriting expert of her choice. The handwriting expert of the choice of the workman was allowed to photograph the necessary documents in the Office of the Tribunal. A liberty was also granted to the workman to examine the said handwriting expert before the Tribunal in support of her defence. A specific direction was given that if the first respondent desires to examine any handwriting expert, she will keep the expert present before the Tribunal on 18th September, 1996.

8. The first Respondent availed of the opportunity granted by the Tribunal by appointing Shri. Mahesh Wagh, a handwriting expert who was examined before the Tribunal. The said handwriting expert was extensively cross examined before the Tribunal in the year 1997.

On an application made by the workman, an order was passed by the Tribunal on 23rd August 1999 permitting the workman to get an opinion about the disputed documents from the second handwriting expert within a period of two months from the date of order. It is pertinent to note that at that time no prayer was made for calling the handwriting expert examined during the enquiry for cross examination. The workman was granted liberty to examine second handwriting expert as the opinion of the first expert appointed by her of her own choice was inconclusive. On the basis of the said order, on 24th April, 2002, Shri. Anil Kumar Mathur submitted an opinion about the disputed documents. In October 2002, Shri. Anil Kumar Mathur was examined before the Tribunal and was also cross examined.

9. It appears that the evidence of Shri. Anil Kumar Mathur was recorded on 16th October, 2002. Nearly 5 months thereafter an application was made by the workman on which the impugned order has been passed. It will be necessary to refer the averments made in the said application. In paragraph no. 3 it was stated that there were three opinions of three different handwriting experts before the Tribunal and only two of them have been examined before the Tribunal. It was contended that the handwriting expert examined by the Petitioner was neither examined nor cross examined before the Tribunal. In paragraph no. 4, a contention was raised that in the interests of

justice the workman should be allowed to cross examine handwriting expert who was examined by the Petitioner in the enquiry proceeding. Though the prayer made in the application was for issuing witness summons to Shri. H.T. Gajjar, averments made in paragraph no. 4 clearly indicate that the intention was to summon Shri. H.T. Gajjar for cross examination by the workman. The application was contested by the petitioner by filing reply. The only ground on which the application was allowed is that it was not open for the Tribunal to go into the validity of adjudication made in paragraphs 22 and 23 of the Part I Award and the Tribunal was bound by the said Award. It is pertinent to note that in paragraph 22 and 23 of Part I award of the Tribunal, it was stated that the workman should be given liberty to appoint her handwriting expert and opportunity may be granted to her to examine said handwriting expert before the Tribunal. On plain reading of Paragraph 22 and 23, it is obvious that the Tribunal never intended to permit the workman to call the handwriting expert of the petitioner who was examined by the petitioner during the course of the disciplinary enquiry. The directions contained in paragraphs 22 and 23 do not permit re-opening of the enquiry which was held to be legal and proper. In fact after holding that the domestic enquiry against the workman was fair and legal, there was no occasion for the Tribunal to grant permission to the workman to cross examine the witness examined by the petitioner- employee during the course

of enquiry. Thus it is obvious that the order impugned is based on complete misreading of paragraphs 22 and 23 of Part I Award. In fact the Tribunal had shown indulgence to the workman by allowing her to examine the second handwriting expert which itself was contrary to paragraphs 22 and 23 of the Part I Award. Paragraph 7 of the impugned order makes it very clear that the Tribunal directed that Shri. H.T. Gajjar should be summoned to enable the workman to cross examine him.

10. In view of above discussions, the only conclusion which can be drawn is that the impugned order is completely illegal and erroneous.

11. Hence, I pass following order.

i) Rule is made obsolute in terms of Prayer Clause (a).

ii) The application dated 27th February 2003 (Exhibit "N" to the Petition) made by the first respondent stands dismissed.

iii) There will be no order as to costs.

(ABHAY S. OKA, J.)